



# Commonwealth of Massachusetts State Ethics Commission

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**SUFFOLK, ss.**

**COMMISSION ADJUDICATORY  
DOCKET NO. 616**

## **IN THE MATTER OF VICTORIA DEIBEL**

### **DISPOSITION AGREEMENT**

The State Ethics Commission and Victoria Deibel enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On May 22, 2000, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Deibel. The Commission has concluded its inquiry and, on September 20, 2000, found reasonable cause to believe that Deibel violated G.L. c. 268A.

The Commission and Deibel now agree to the following findings of fact and conclusions of law:

1. At all times relevant to this matter, Deibel was a member of the Rockland Board of Health ("Board"). As such, she was a municipal employee within the meaning of G.L. c. 268A, §1.
2. During the relevant period, members of Deibel's immediate family owned a restaurant in Rockland called Anita Marie's.
3. In June 1998, the Board hired Michael Hambly as health agent. In August 1998, the Board hired John Doyle as health director. Doyle's contract did not have a notice-of-termination clause. Hambly's contract required a 60-day written notice before he could be terminated.
4. On August 27, 1998, Hambly and Doyle inspected Anita Marie's. They found four critical and 16 non-critical violations.
5. On September 10, 1998, Hambly and a State Department of Public Health Food and Drug Inspector re-inspected Anita Marie's. The inspection resulted in one critical and 11 non-critical violations.
6. In the ordinary course of the health inspection process, a re-inspection of Anita Marie's would have occurred in late September.
7. At the September 22, 1998 Board meeting, a motion was made to terminate Doyle's and Hambly's contracts, "effective immediately." Deibel seconded the motion. The motion passed 2 to 1 with Deibel

voting in favor of termination. The termination notice was communicated immediately to both Doyle and Hambly, without a 60-day notice to Hambly.

8. Deibel testified that her vote to terminate Doyle and Hambly was unrelated to any inspections of Anita Marie's. Deibel maintains that her actions were based on merit, mainly the inspectors' failure to perform their duties in matters concerning the landfill and their failure to send notices to residences of a potential methane gas leak in a timely manner. Deibel, however, did not indicate her rationale at the time of the September 22, 1998 Board termination vote.

9. The Commission has no evidence to suggest that Deibel was aware that her actions violated G.L. c. 268A when she participated in the decision to terminate the employment contracts of health director Doyle and health agent Hambly. Ignorance of the law, however, is no defense to a violation of G.L. c. 268A. *In re Doyle*, 1980 SEC 11, 13. *See also, Scola v. Scola*, 318 Mass. 1, 7 (1945).

10. General Laws chapter 268A, §23(b)(3), in relevant part, prohibits a municipal employee from, knowingly or with reason to know, acting in a manner which would cause a reasonable person having knowledge of the relevant circumstances, to conclude that any person can improperly influence the employee or unduly enjoy the employee's favor in the performance of the employee's official duties, or that the employee is likely to act or fail to act as the result of kinship, rank, position or undue influence of any party or person. Section 23(b)(3) further provides that "[i]t shall be unreasonable to so conclude if [the employee] has disclosed in writing to his appointing authority ... the facts which would otherwise lead to such a conclusion."

11. By as a Board member voting to terminate the employment contracts of health director Doyle and Health agent Hambly, who had recently been involved with negative inspections of her family's restaurant, and who would likely perform follow up inspections in the near future, Deibel knowingly or with reason to know acted in a manner which would cause a reasonable person with knowledge of the relevant circumstances to conclude that her and/or her family's interests could improperly influence Deibel in the performance of her official duties as a Board member. In so doing, Deibel violated §23(b)(3). (This violation could have been avoided if Deibel had made a written §23 disclosure which was public in nature of her family's restaurant inspection history with Hambly and Doyle.)

12. Deibel cooperated with the Commission's investigation.

In view of the foregoing violation of G.L. c. 268A by Deibel, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Deibel:

(1) that Deibel pay to the Commission the sum of \$1,000 as a civil penalty for violating G.L. c. 268A, §23(b)(3); and

(2) that Deibel waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE: March 21, 2001**